



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

841 Chestnut Building

Philadelphia, Pennsylvania 19107

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NOV 14 1994

GENERAL NOTICE LETTER

URGENT LEGAL MATTER: PROMPT REPLY NECESSARY

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Kennecott Refining Corporation  
c/o Satoru Kamio, Chief Executive Officer  
Cox Creek Refining Company  
1000 Kembo Road  
Baltimore, MD 21226

Re: Jack's Creek/Sitkin Smelting Superfund Site (Kennecott Refining)

Dear Sir:

This letter notifies you<sup>1</sup> that you may incur, or may have incurred, liability under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), with respect to the Jack's Creek/Sitkin Smelting Superfund Site ("Site"). This letter also notifies you of potential response activities at the Site, which you may be asked to perform or pay for at a later date if EPA performs them.

BACKGROUND

CERCLA, more commonly known as Superfund, was enacted in 1980, reauthorized and amended in 1986, and reauthorized again in 1990. CERCLA has several key objectives, including setting priorities for cleanup of the worst hazardous sites in the country, and determining the parties potentially responsible for investigating, cleaning up or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs."

In June 1988, the United States Environmental Protection Agency ("EPA") proposed the Site for inclusion on the National Priorities List ("NPL"), a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur. The Site was listed on the NPL in October 1989.

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<sup>1</sup> For the purposes of this letter, the term "you" shall refer to either an individual, a company, a partnership, a sole proprietorship, or a corporation, whichever is applicable.

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NOTICE OF YOUR POTENTIAL LIABILITY

EPA has obtained documents from the Sitkin Smelting Site. After reviewing these documents, EPA believes you may be a PRP for this Site. These documents have been summarized in the "Draft Volumetric Ranking" list attached hereto as "Attachment 3". PRPs under CERCLA include: 1) current owners and operators of the site; 2) owners and operators of the site at the time hazardous substances were disposed; 3) persons who arranged for disposal or treatment of hazardous substances sent to the site; and 4) persons who accepted hazardous substances for transport to the site, and who selected the site for disposal. These categories are set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

EPA has documented the release or threatened release of hazardous substances, pollutants or contaminants at, or from the Site, as those terms are defined in Section 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33). EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a PRP or PRPs will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or require them to be performed by responsible parties under Section 106 of CERCLA, 42 U.S.C. § 9606.

EPA may order any or all of the PRPs to perform response actions which EPA deems necessary to protect the public health, welfare and/or the environment. Additionally, PRPs may be liable for all costs incurred by the government in responding to any release or threatened release at the Site, under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a), the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 et seq., and other laws. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ("RI/FS"), conducting a Remedial Design/Remedial Action ("RD/RA"), and other investigation, planning, response, oversight, and enforcement activities related to the Site. In addition, potentially responsible parties may be required to pay for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing the amount or extent of such damages related to a site.

You should also be aware that once a site is placed on the NPL pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, it cannot be deleted until after an RI/FS has been completed and the necessary remedial action has been conducted in accordance with

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EPA guidance and the National Contingency Plan ("NCP"), published at 40 C.F.R. Part 300.

EPA has completed the RI/FS for the Site. In the near future, EPA will issue a Proposed Plan to the public for review and comment. The Proposed Plan will contain EPA's preferred alternative for the Site. There is a thirty-day public comment period, which may be extended for cause shown, following which EPA will issue a Record of Decision ("ROD") delineating the remedy selected for the Site. A ROD is the decision document, signed by the Regional Administrator of EPA Region III, which sets forth the remedy that EPA or the PRPs will implement at the Site.

By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to perform or to voluntarily finance the response activities that EPA determines to be necessary at the Site.

**SITE RESPONSE ACTIVITIES**

In accordance with CERCLA and other authorities, EPA has already undertaken response actions and incurred costs at the Site beginning in 1990. EPA has conducted sampling of on-site soil and water; constructed diking; riprap runoff channels; planted soil stabilizing grasses; installed a temporary cap on a portion of the Site which was draining into Jack's Creek; partially drained four lagoons; removed ferrous scrap metal to the active part of the scrap yard; installed a chain link fence around the eastern portion of the Site; and moved drums and other containers of bulk chemicals.

At present, EPA is planning to issue a Proposed Plan and a ROD in early 1995.

EPA may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

**INFORMATION TO ASSIST RESPONSIBLE PARTIES**

EPA encourages good faith negotiations between the PRPs and EPA, as well as among the PRPs. Therefore, EPA is providing, as attachment 4 to this letter, a list of the names and addresses of the PRPs to whom notification similar to this was sent or who have previously been notified. In March 1994 EPA issued approximately 400 notice letters similar to this one. This list represents EPA's findings on the identities of the PRPs for this Site. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability

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of any party for the release or threat of release of hazardous substances at or from the Site.

EPA is enclosing various documents to assist you with negotiations among the PRPs. Those documents are listed below. If any one or more of these documents is missing from this information package, kindly call Bowen Hosford at (215) 597-8981 and leave a message as to which document is missing and the name and address where the copy may be sent. The following documents, included with this letter, are either generally applicable to the Site, or specific to you as a PRP at the Site.

1. Site fact sheet;
2. Computer Printout and Sitkin Smelting Documents;
3. Draft Volumetric Ranking;<sup>2</sup>
4. List of PRP names and addresses; and
5. EPA guidance on de minimis settlements entitled Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor of Settlements, December 20, 1989, OSWER Directive 9834.7-1B (attached).<sup>3</sup>
6. September 1994 De Minimis settlement offer.

EPA has provided the above documentation in an effort to facilitate communication and negotiations between the PRPs. EPA has offered a de minimis settlement to those whose "waste-in" amounts to more than 10,000 but less than 1,000,000 pounds of hazardous waste. EPA received signature pages from 112 parties who intend to settle with EPA under the terms of this settlement agreement. The deadline for settling under those terms was September 28, 1994. Assuming this settlement is approved by the Assistant Attorney General, these 112 parties will have settled

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<sup>2</sup> This information does not constitute a non-binding preliminary allocation of responsibility ("NBAR") under CERCLA Section 122(e)(3) and should not be construed as an allocation of responsibility or liability by EPA. The Draft Volumetric Ranking is provided solely for your information. The list contains information on each PRP pertaining to weight only.

<sup>3</sup> See also, Methodology for Early De Minimis Waste Contributor Settlements under CERCLA Section 122 (g)(1)(A), June 2, 1992, OSWER Directive 9834.7-1C (supplement).

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their liability and will be deleted from the list of 400 parties who received notice of their potential liability, as noted above.

Kennecott Refining Corporation falls within the definition of de minimis for the purposes of this settlement. EPA did not contact you prior to this date because it was not aware of your company as a potential successor to Kennecott Refining Corporation. A copy of the de minimis offer is included with this package as Attachment 6. Please refer to the EPA guidance on de minimis settlements for more information on how EPA has delineated between de minimis and de maximus parties. You will find your percentage of "waste-in" in Attachment 3, "Draft Volumetric Ranking." Because EPA did not identify your company in time to provide an opportunity to settle, it is offering you such an opportunity now. Please notify Dan Isales (215/597-4774), Pam Lazos (215/597-8504), or Bowen Hosford (215/597-8981) immediately if you wish to settle your company's liability for the Site.

Additionally, on March 24, 1994, EPA held a meeting to provide general information to those parties who had received notice of their potential liability and to provide an opportunity for the parties to begin organizing steering committees. A de minimis steering committee was formed. If you wish to communicate with a representative of the steering committee, you may contact John Judge, Esquire, common counsel for the de minimis steering committee, at (215) 575-6037.

If you wish to contest EPA's liability findings regarding the waste-in list, the volumetric ranking, or some other document, EPA invites you to call Bowen Hosford at (215) 597-8981.

ADMINISTRATIVE RECORD

Pursuant to CERCLA § 113(k), 42 U.S.C. §9613(k), EPA establishes an administrative record that contains documents which form the basis for EPA's decision on the selection of each response action for a site. The administrative record will be available to the public for inspection and comment before any remedy is selected by EPA. Copies of the record are located near the Site at the East Derry Elementary School, RD #3, Lewistown, Pennsylvania; at the Mifflin County Library, 123 North Wayne Street, Lewistown, Pennsylvania; and at the EPA Region III Office, 841 Chestnut Building, Philadelphia, Pennsylvania. The administrative record will be updated prior to issuance of the Proposed Plan. At the time of issuance, and as part of the Proposed Plan you will be notified of the contact person for comments on the administrative record.

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Upon completion of the public comment period and EPA's review of the comments, EPA will select the remedy for the Site. The selection of the remedy will be documented in a ROD, which will also become part of the administrative record.

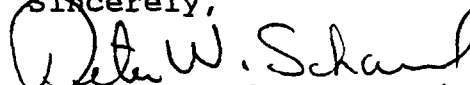
PRP RESPONSE AND EPA CONTACT

If you are already involved in discussions with State or local authorities, engaged in voluntary action or involved in a lawsuit regarding this Site, you should not interpret this letter as advising or directing you to restrict or to discontinue any such activities. You should, however, report the status of those discussions or activities to EPA.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as a final EPA position on any matter set forth herein.

If you have any questions regarding the foregoing, please call Bowen Hosford at (215) 597-8981.

Sincerely,



Abraham Ferdas, Associate Division  
Director for Superfund Programs  
Hazardous Waste Management Division

Enclosures

cc: Elise White, PADER

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